

REMARKS

Claims 20-22, 24, and 25 are now pending in the application. The Examiner is respectfully requested to reconsider and withdraw the rejection in view of the amendments and remarks contained herein.

DOUBLE PATENTING REJECTION

Claims 20-22, 24, and 25 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-19 of U.S. Patent No. 6,689,134.

Claims 20-22, 24, and 25 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-18 of U.S. Patent No. 6,666,867.

Applicants' previously filed Terminal Disclaimers under 37 CFR 1.321 were not approved by the Examiner because "no reel and frame numbers were provided". Applicants cannot find any such requirement in 37 CFR 1.321. A Statement under 37 CFR 3.73(b) with Assignment had been previously filed. Nevertheless, to expedite matters, Applicants attach new Terminal Disclaimers accompanied by a new Statement under 37 CFR 3.73(b) for the Examiner's approval.

REJECTION UNDER 35 U.S.C. § 103

Claims 20-22, 24, and 25 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Robinson et al (U.S. Pat. No. 5,364,396), hereinafter Robinson, in

view of Errico et al (U.S. Pat. No. 5,531,746), hereinafter Errico. This rejection is respectfully traversed.

Robinson appears to disclose a bone distraction device 10 for distracting osteotomically separated bone sections 12, 14 of a patient's skull. The device includes first and second low-profile blocks 16, 18 and a rotatable drive rod 20. The drive rod 20 is received in a threaded internal chamber or bore 26 of the blocks, i.e., the bore 26 is substantially parallel or coplanar to the blocks. The rod is actuated with gear-type actuation means 22 in the form of a worm 28 for adjusting the longitudinal spacing between the blocks. The device includes a pair of guide pins 44 that are slidably received in complementarily shaped bores that are spaced apart. See column 4, lines 45-53, and FIG. 3. As such, the guide pins 44 are not adjacent and cannot separate or move transversely relative to one another for locking the relative length of the blocks. Robinson discloses attachment plates 53, 54 for attaching the blocks 16, 18 to osteotomically separated bone sections. The plates 52, 54 are provided with eyelets to receive bone screws 59. The plates are "preferably made out of malleable metal such as titanium so that the plate can be deformed or bent to the shape bone surface". Column 5, lines 3-12.

Errico discloses a monolithic vertebral plate with a hole that receives a coupler that can support a bone screw in polyaxial orientation. See FIG. 6. It should be appreciated that these teachings of Errico cannot be combined with Robinson without destroying the "extremely low-profile" requirements of Robinson's device 10 and increase the number of parts comprising its advantage of being "easily manufactured". See column 5, lines 27-32. Further, introducing a coupler in the attachment plates 52,

54 of Robinson will significantly increase the thickness of the attachment plates and destroy their malleability. In this regard, Robinson teaches away from such combination.

Accordingly and regarding independent claim 20, Robinson and Errico, either individually, or in combination, even assuming that such combination is proper, fail to disclose, inter alia, means for locking the length of the plate assembly including a threaded bore substantially perpendicular to the plate assembly and a set screw passing between the means for adjusting the length of the plate assembly and into the threaded bore.

Similarly, and regarding independent claim 25, Robinson and Errico, either individually, or in combination, even assuming that such combination is proper, fail to disclose, inter alia, a lock assembly for locking the prongs within the longitudinal bore of the second longitudinal plate at one of the plurality of positions, wherein the lock assembly comprises a threaded bore defined by and between the prongs of the first longitudinal plate and substantially perpendicular to the first longitudinal plate and a set screw passing between the prongs and into the threaded bore, such that the two prongs move away transversely from one another and press against an inner surface of the longitudinal bore of the second plate.

Therefore, independent claims 20 and 25 are patentable over Robinson in view of Errico. Claims 21 and 22 ultimately depend from claim 20, and claim 24 ultimately depends from claim 25. At least for this reason, claims 21, 22 and 24 are also patentable. Applicants further submit that claims 21, 22 and 24 are also independently patentable.


Reconsideration and withdrawal of this rejection is respectfully requested.

CONCLUSION

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request reconsideration and withdrawal of all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action and that the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

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